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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.       | CONFIRMATION NO.   |
|--|-------------|----------------------|---------------------------|--------------------|
| 09/896,853   | 06/29/2001  | Manfred Weuthen      | C 2213 US                 | 9048               |
| 23657  | 7590        | 07/11/2003           |                           |                    |
| COGNIS CORPORATION<br>2500 RENAISSANCE BLVD., SUITE 200<br>GULPH MILLS, PA 19406 |             |                      | EXAMINER<br>MRUK, BRIAN P |                    |
|  |             |                      | ART UNIT<br>1751          | PAPER NUMBER<br>10 |

DATE MAILED: 07/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

|                             |                 |                |
|-----------------------------|-----------------|----------------|
| <b>Offic Action Summary</b> | Application N . | Applicant(s)   |
|                             | 09/896,853      | WEUTHEN ET AL. |
|                             | Examiner        | Art Unit       |
|                             | Brian P Mruk    | 1751           |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Peri d for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 02 May 2003.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 11-23 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 11-23 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

|  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

1. This Office action is in response to Applicant's amendment filed May 2, 2003. Applicant has amended claims 11, 17 and 22. New claim 23 has been added. Currently, claims 11-23 remain pending in the application.
2. The text of those sections of Title 35 U.S. Code not included in this action can be found in the prior Office action, Paper No. 8.
3. The objection of claim 22 is withdrawn in view of applicant's amendment and remarks.
4. The rejection of claims 11-22 under 35 U.S.C. 102(b) as being anticipated by Pruehs et al, U.S. Patent No. 4,898,621, is maintained for the reasons of record.
5. The rejection of claims 11-14 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 12-14 of copending Application No. 10/257,853 is maintained for the reasons of record.

**NEW GROUNDS OF REJECTION**

***Claim Rejections - 35 USC § 102***

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6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 11-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Schmid et al, DE 19738866.

Schmid et al, DE 19738866, discloses a detergent composition comprising 0.5-20% by weight of a hydroxy mixed ether of Formula (I), 0.5-20% by weight of nonionic surfactants, 0-40% by weight of a solvent, 0.1-50% by weight of a carboxylic acid, 1-20% by weight of an alkylbenzenesulfonic acid, and water to balance (see abstract and page 2, line 51-page 3, line 26), per the requirements of the instant invention. It is further taught by Schmid et al that the variable R<sup>2</sup> includes a hydrogen atom, that the variable X includes zero, and that the variable Z includes one (see Formula (I) on page 2, lines 54-63 of Schmid et al, DE 19738866), per the requirements of instant claims 12 and 18. Schmid et al further teaches that the detergent composition is used in a process for cleaning laundry (see attached abstract), per the requirements of instant claim 23. Specifically, note the Examples in Tables 1-3. Therefore, instant claims 11-23 are anticipated by Schmid et al, DE 19738866.

***Response to Arguments***

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8. Applicant's arguments filed May 2, 2003 have been fully considered but they are not persuasive.

Applicant argues that the transitional phrase "consisting essentially of" in claim 11 would exclude the rinse aid ingredients required in Pruehs et al, U.S. Patent No. 4,898,621, since these ingredients would alter the basic and novel characteristics of the presently claimed invention. However, the examiner asserts that the instant specification recites that the instant composition may include various additives, and further notes that the instant specification does not provide any evidence that the additives in a rinse aid formulation would materially affect the basic and novel characteristics of the claimed invention. "When an applicant contends that additional steps or materials in the prior art are excluded by the recitation of "consisting essentially of," applicant has the burden of showing that the introduction of additional steps or components would materially change the characteristics of applicant's invention." See **MPEP 2111.03.**

Applicant further argues that the process recited in instant claims 17-22 are directed to an aqueous laundry detergent, rather than a rinse aid process required in Pruehs et al, U.S. Patent No. 4,898,621. However, the examiner asserts that the process required in instant claim 17 requires the step of adding a hydroxy mixed ether to a composition. Therefore, since Pruehs et al, U.S. Patent No. 4,898,621, clearly teaches that the rinse aid formulation is made by adding the components together to form a composition, the examiner asserts that the limitations of instant claims 17-22 are anticipated by Pruehs et al, U.S. Patent No. 4,898,621. Furthermore, the examiner

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notes that the recitation of "an aqueous laundry detergent composition" in instant claim 17 occurs in the preamble, which is not accorded any patentable weight, since the preamble of instant claim 17 does not breath life and meaning into the claim. "A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone." **See MPEP 2111.02.**

Applicant further argues that the transitional phrase "consisting essentially of" in claim 11 would exclude the water insoluble or water soluble packet required in copending application 10/257,853, since this component would alter the basic and novel characteristics of the presently claimed invention. However, the examiner asserts that the instant specification recites that the instant composition may include various additives, and further notes that the instant specification does not provide any evidence that the water insoluble or water soluble packet would materially affect the basic and novel characteristics of the claimed invention. "When an applicant contends that additional steps or materials in the prior art are excluded by the recitation of "consisting essentially of," applicant has the burden of showing that the introduction of additional steps or components would materially change the characteristics of applicant's invention." **See MPEP 2111.03.**

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Mruk whose telephone number is (703) 305-0728. The examiner can normally be reached on Monday-Thursday from 7:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (703) 308-4708. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310 (Before Final) and (703) 872-9311 (After Final).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

BPM

Brian Mruk  
July 9, 2003

*Brian P. Mruk*

Brian P. Mruk  
Patent Examiner  
Tech Center 1700